

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERESA M. HAFF

Claimant

VS.

LAWRENCE PUBLIC SCHOOLS USD 497

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 258,651

ORDER

Respondent appeals the October 23, 2000, preliminary hearing Order of Administrative Law Judge Brad E. Avery.

ISSUES

Respondent contends the Administrative Law Judge exceeded his jurisdiction by ignoring uncontroverted evidence that claimant was working during the same period when temporary total disability compensation was ordered. That is the only issue before the Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidence filed herein, the Appeals Board finds the appeal of the respondent should be dismissed.

Claimant suffered accidental injury on July 7, 2000, when she fell off of a ladder, striking a shelf with her left upper thigh and falling to the floor. Claimant was provided authorized medical treatment with several doctors, including Chris D. Fevurly, M.D., Scott T. Thellman, M.D., Jeffrey C. Randall, M.D., and, by self-referral, Mary Ann Hoffmann, M.D. Dr. Fevurly and Dr. Randall returned claimant to work August 25, 2000. Dr. Hoffmann opined on that same date that claimant was unable to return to substantial gainful employment. The Administrative Law Judge ordered temporary total disability compensation beginning August 25, 2000, and continuing until claimant reached maximum medical improvement, was released to a regular job or returned to gainful employment, whichever came first.

Respondent contends claimant is ineligible for temporary total disability compensation as, one night per week, for approximately six hours, claimant checks identification at the Laughing Dog Saloon in Lawrence, Kansas. This job requires claimant sit on a stool and check identification as people come in the door. It requires no other physical activity. The Administrative Law Judge was aware of this evidence when he ordered temporary total disability to continue. Respondent contends the Administrative Law Judge erred because this constitutes substantial gainful employment and excludes claimant from entitlement to temporary total disability compensation.

K.S.A. 1999 Supp. 44-551 limits the rights of a party to appeal from a preliminary hearing order to situations where it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the relief requested at preliminary hearing. K.S.A. 1999 Supp. 44-534a allows appeals from preliminary hearings when dealing with specific jurisdictional issues regarding whether claimant suffered an accidental injury, whether the injury arose out of and in the course of employment, whether notice is given or claim timely made, or whether certain defenses apply.

In this instance, the issue on appeal deals specifically with claimant's entitlement to temporary total disability compensation. An administrative law judge has the jurisdiction to decide that issue and to grant or deny temporary total disability compensation at preliminary hearing. Jurisdiction not only entails the administrative law judge to correctly order, but also to incorrectly order, temporary total disability compensation. The Appeals Board finds, under K.S.A. 1999 Supp. 44-534a and K.S.A. 1999 Supp. 44-551, it does not have jurisdiction to consider this matter at this juncture. Therefore, the appeal of the respondent in this instance is dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Brad E. Avery dated October 23, 2000, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Sally G. Kelsey, Lawrence, KS
Kip A. Kubin, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director